

115TH CONGRESS
2D SESSION

H. R. 6199

IN THE SENATE OF THE UNITED STATES

JULY 26, 2018

Received

AN ACT

To amend the Internal Revenue Code of 1986 to include certain over-the-counter medical products as qualified medical expenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Restoring Access to Medication and Modernizing Health
4 Savings Accounts Act of 2018”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. First dollar coverage flexibility for high deductible health plans.
- Sec. 3. Treatment of direct primary care service arrangements.
- Sec. 4. Certain employment related services not treated as disqualifying coverage for purposes of health savings accounts.
- Sec. 5. Contributions permitted if spouse has a health flexible spending account.
- Sec. 6. FSA and HRA terminations or conversions to fund HSAs.
- Sec. 7. Inclusion of certain over-the-counter medical products as qualified medical expenses.
- Sec. 8. Certain amounts paid for physical activity, fitness, and exercise treated as amounts paid for medical care.

7 **SEC. 2. FIRST DOLLAR COVERAGE FLEXIBILITY FOR HIGH**
8 **DEDUCTIBLE HEALTH PLANS.**

9 (a) IN GENERAL.—Section 223(c)(2) of the Internal
10 Revenue Code of 1986 is amended by adding at the end
11 the following new subparagraph:

12 “(E) FIRST DOLLAR COVERAGE FLEXI-
13 BILITY.—

14 “(i) IN GENERAL.—A plan shall not
15 fail to be treated as a high deductible
16 health plan by reason of failing to have a
17 deductible for not more than \$250 of spec-
18 ified services for self-only coverage (twice
19 such amount in the case of family cov-
20 erage) during a plan year.

1 “(ii) SPECIFIED SERVICES.—For pur-
2 poses of this subparagraph, the term ‘spec-
3 ified services’ means, with respect to a
4 plan, services other than preventive care
5 (within the meaning of subparagraph (C))
6 identified under the terms of the plan as
7 being services to which clause (i) applies.”.

8 (b) INFLATION ADJUSTMENT.—Section 223(g)(1) of
9 such Code is amended—

10 (1) by striking “and (c)(2)(A)” each place it
11 appears and inserting “, (c)(2)(A), and (c)(2)(E)”,
12 and

13 (2) in subparagraph (B)—

14 (A) by striking “such taxable year” in the
15 matter preceding clause (i) and inserting “the
16 taxable year (plan year in the case of the dollar
17 amount in subsection (c)(2)(E))”, and

18 (B) by striking “clause (ii)” and inserting
19 “clauses (ii) and (iii)” in clause (i), by striking
20 “and” at the end of clause (i), by striking the
21 period at the end of clause (ii) and inserting “,
22 and”, and by inserting after clause (ii) the fol-
23 lowing new clause:

24 “(iii) in the case of the dollar amount
25 in subsection (c)(2)(E) for plan years be-

1 ginning in calendar years after 2019, ‘cal-
2 endar year 2018’.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to plan years begin-
5 ning after December 31, 2018.

6 **SEC. 3. TREATMENT OF DIRECT PRIMARY CARE SERVICE**
7 **ARRANGEMENTS.**

8 (a) IN GENERAL.—Section 223(c)(1) of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new subparagraph:

11 “(D) TREATMENT OF DIRECT PRIMARY
12 CARE SERVICE ARRANGEMENTS.—

13 “(i) IN GENERAL.—A direct primary
14 care service arrangement shall not be
15 treated as a health plan for purposes of
16 subparagraph (A)(ii).

17 “(ii) DIRECT PRIMARY CARE SERVICE
18 ARRANGEMENT.—For purposes of this
19 paragraph—

20 “(I) IN GENERAL.—The term ‘di-
21 rect primary care service arrange-
22 ment’ means, with respect to any indi-
23 vidual, an arrangement under which
24 such individual is provided medical
25 care (as defined in section 213(d))

1 consisting solely of primary care serv-
2 ices provided by primary care practi-
3 tioners (as defined in section
4 1833(x)(2)(A) of the Social Security
5 Act, determined without regard to
6 clause (ii) thereof), if the sole com-
7 pensation for such care is a fixed peri-
8 odic fee.

9 “(II) LIMITATION.—With respect
10 to any individual for any month, such
11 term shall not include any arrange-
12 ment if the aggregate fees for all di-
13 rect primary care service arrange-
14 ments (determined without regard to
15 this subclause) with respect to such
16 individual for such month exceed
17 \$150 (twice such dollar amount in the
18 case of an individual with any direct
19 primary care service arrangement (as
20 so determined) that covers more than
21 one individual).

22 “(iii) CERTAIN SERVICES SPECIFI-
23 CALLY EXCLUDED FROM TREATMENT AS
24 PRIMARY CARE SERVICES.—For purposes

of this paragraph, the term ‘primary care services’ shall not include—

“(I) procedures that require the use of general anesthesia,

“(II) prescription drugs (other than vaccines), and

“(III) laboratory services not typically administered in an ambulatory primary care setting.

The Secretary, after consultation with the Secretary of Health and Human Services, shall issue regulations or other guidance regarding the application of this clause.”.

(b) DIRECT PRIMARY CARE SERVICE ARRANGEMENT FEES TREATED AS MEDICAL EXPENSES.—Section 223(d)(2)(C) is amended by striking “or” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, or”, and by adding at the end the following new clause:

“(v) any direct primary care service arrangement.”.

(c) INFLATION ADJUSTMENT.—Section 223(g)(1) of such Code, as amended by section 2(b), is amended—

(1) by inserting “(c)(1)(D)(ii)(II),” after “(b)(2),” each place it appears, and

1 (2) in subparagraph (B), by striking “and (iii)”
 2 and inserting “, (iii) and (iv)” in clause (i), by strik-
 3 ing “and” at the end of clause (ii), by striking the
 4 period at the end of clause (iii) and inserting “,
 5 and”, and by inserting after clause (iii) the following
 6 new clause:

7 “(iv) in the case of the dollar amount
 8 in subsection (c)(1)(D)(ii)(II) for taxable
 9 years beginning in calendar years after
 10 2019, ‘calendar year 2018’.”.

11 (d) REPORTING OF DIRECT PRIMARY CARE SERVICE
 12 ARRANGEMENT FEES ON W-2.—Section 6051(a) of such
 13 Code is amended by striking “and” at the end of para-
 14 graph (16), by striking the period at the end of paragraph
 15 (17) and inserting “, and”, and by inserting after para-
 16 graph (17) the following new paragraph:

17 “(18) in the case of a direct primary care serv-
 18 ice arrangement (as defined in section
 19 223(c)(1)(D)(ii)) which is provided in connection
 20 with employment, the aggregate fees for such ar-
 21 rangement for such employee.”.

22 (e) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to months beginning after Decem-
 24 ber 31, 2018, in taxable years ending after such date.

1 **SEC. 4. CERTAIN EMPLOYMENT RELATED SERVICES NOT**
2 **TREATED AS DISQUALIFYING COVERAGE FOR**
3 **PURPOSES OF HEALTH SAVINGS ACCOUNTS.**

4 (a) IN GENERAL.—Section 223(c)(1) of the Internal
5 Revenue Code of 1986, as amended by section 3(a), is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(E) SPECIAL RULE FOR QUALIFIED
9 ITEMS AND SERVICES.—

10 “(i) IN GENERAL.—An individual
11 shall not be treated as covered under a
12 health plan for purposes of subparagraph
13 (A)(ii) merely because the individual, in
14 connection with the employment of the in-
15 dividual or the individual’s spouse, receives
16 (or is eligible to receive) qualified items
17 and services at—

18 “(I) a healthcare facility located
19 at a facility owned or leased by the
20 employer of the individual (or of the
21 individual’s spouse), or operated pri-
22 marily for the benefit of such employ-
23 er’s employees, or

24 “(II) a healthcare facility located
25 within a supermarket, pharmacy, or
26 similar retail establishment.

1 “(ii) QUALIFIED ITEMS AND SERVICES
2 DEFINED.—For purposes of this subpara-
3 graph, the term ‘qualified items and serv-
4 ices’ means the following:

5 “(I) Physical examinations.

6 “(II) Immunizations, including
7 injections of antigens provided by em-
8 ployees.

9 “(III) Drugs other than a pre-
10 scribed drug (as such term is defined
11 in section 213(d)(3)).

12 “(IV) Treatment for injuries oc-
13 ccurring in the course of employment.

14 “(V) Drug testing, if required as
15 a condition of employment.

16 “(VI) Hearing or vision
17 screenings.

18 “(VII) Other similar items and
19 services that do not provide signifi-
20 cant benefits in the nature of medical
21 care.

22 “(iii) AGGREGATION.—For purposes
23 of clause (i)(I), all persons treated as a
24 single employer under subsection (b), (c),

1 (m), or (o) of section 414 shall be treated
2 as a single employer.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to months beginning after Decem-
5 ber 31, 2018, in taxable years ending after such date.

6 **SEC. 5. CONTRIBUTIONS PERMITTED IF SPOUSE HAS A**
7 **HEALTH FLEXIBLE SPENDING ACCOUNT.**

8 (a) CONTRIBUTIONS PERMITTED IF SPOUSE HAS A
9 HEALTH FLEXIBLE SPENDING ACCOUNT.—Section
10 223(c)(1)(B) of the Internal Revenue Code of 1986 is
11 amended by striking “and” at the end of clause (ii), by
12 striking the period at the end of clause (iii) and inserting
13 “, and”, and by inserting after clause (iii) the following
14 new clause:

15 “(iv) coverage under a health flexible
16 spending arrangement of the spouse of the
17 individual for any plan year of such ar-
18 rangement if the aggregate reimburse-
19 ments under such arrangement for such
20 year do not exceed the aggregate expenses
21 which would be eligible for reimbursement
22 under such arrangement if such expenses
23 were determined without regard to any ex-
24 penses paid or incurred with respect to
25 such individual.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2018.

4 **SEC. 6. FSA AND HRA TERMINATIONS OR CONVERSIONS TO**
5 **FUND HSAS.**

6 (a) IN GENERAL.—Section 106(e)(2) of the Internal
7 Revenue Code of 1986 is amended to read as follows:

8 “(2) QUALIFIED HSA DISTRIBUTION.—For pur-
9 poses of this subsection—

10 “(A) IN GENERAL.—The term ‘qualified
11 HSA distribution’ means, with respect to any
12 employee, a distribution from a health flexible
13 spending arrangement or health reimbursement
14 arrangement of such employee directly to a
15 health savings account of such employee if—

16 “(i) such distribution is made in con-
17 nection with such employee establishing
18 coverage under a high deductible health
19 plan (as defined in section 223(c)(2)) after
20 a significant period of not having such cov-
21 erage, and

22 “(ii) such arrangement is described in
23 section 223(c)(1)(B)(iii) with respect to
24 the portion of the plan year after such dis-
25 tribution is made.

1 “(B) DOLLAR LIMITATION.—The aggre-
2 gate amount of distributions from health flexi-
3 ble spending arrangements and health reim-
4 bursement arrangements of any employee which
5 may be treated as qualified HSA distributions
6 in connection with an establishment of coverage
7 described in subparagraph (A)(i) shall not ex-
8 ceed the dollar amount in effect under section
9 125(i)(1) (twice such amount in the case of cov-
10 erage which is described in section
11 223(b)(2)(B)).”.

12 (b) PARTIAL REDUCTION OF LIMITATION ON DE-
13 DUCTIBLE HSA CONTRIBUTIONS.—Section 223(b)(4) of
14 such Code is amended by striking “and” at the end of
15 subparagraph (B), by striking the period at the end of
16 subparagraph (C) and inserting “, and”, and by inserting
17 after subparagraph (C) the following new subparagraph:

18 “(D) so much of any qualified HSA dis-
19 tribution (as defined in section 106(e)(2)) made
20 to a health savings account of such individual
21 during the taxable year as does not exceed the
22 aggregate increases in the balance of the ar-
23 rangement from which such distribution is
24 made which occur during the portion of the
25 plan year which precedes such distribution

1 (other than any balance carried over to such
2 plan year and determined without regard to any
3 decrease in such balance during such portion of
4 the plan year).”.

5 (c) CONVERSION TO HSA-COMPATIBLE ARRANGE-
6 MENT FOR REMAINDER OF PLAN YEAR.—Section
7 223(c)(1)(B)(iii) of such Code, as amended by section
8 5(a), is amended to read as follows:

9 “(iii) coverage under a health flexible
10 spending arrangement or health reimburse-
11 ment arrangement for the portion of the
12 plan year after a qualified HSA distribu-
13 tion (as defined in section 106(e)(2) deter-
14 mined without regard to subparagraph
15 (A)(ii) thereof) is made, if the terms of
16 such arrangement which apply for such
17 portion of the plan year are such that, if
18 such terms applied for the entire plan
19 year, then such arrangement would not be
20 taken into account under subparagraph
21 (A)(ii) of this paragraph for such plan
22 year, and”.

23 (d) INCLUSION OF QUALIFIED HSA DISTRIBUTIONS
24 ON W-2.—

1 (1) IN GENERAL.—Section 6051(a) of such
 2 Code, as amended by section 3(d), is amended by
 3 striking “and” at the end of paragraph (17), by
 4 striking the period at the end of paragraph (18) and
 5 inserting “, and”, and by inserting after paragraph
 6 (18) the following new paragraph:

7 “(19) the amount of any qualified HSA dis-
 8 tribution (as defined in section 106(e)(2)) with re-
 9 spect to such employee.”.

10 (2) CONFORMING AMENDMENT.—Section
 11 6051(a)(12) of such Code is amended by inserting
 12 “(other than any qualified HSA distribution, as de-
 13 fined in section 106(e)(2))” before the comma at the
 14 end.

15 (e) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to distributions made after Decem-
 17 ber 31, 2018, in taxable years ending after such date.

18 **SEC. 7. INCLUSION OF CERTAIN OVER-THE-COUNTER MED-**
 19 **ICAL PRODUCTS AS QUALIFIED MEDICAL EX-**
 20 **PENSES.**

21 (a) HSAs.—Section 223(d)(2) of the Internal Rev-
 22 enue Code of 1986 is amended—

23 (1) by striking the last sentence of subpara-
 24 graph (A) and inserting the following: “For pur-
 25 poses of this subparagraph, amounts paid for men-

1 strual care products shall be treated as paid for
2 medical care.”, and

3 (2) by adding at the end the following new sub-
4 paragraph:

5 “(D) MENSTRUAL CARE PRODUCT.—For
6 purposes of this paragraph, the term ‘menstrual
7 care product’ means a tampon, pad, liner, cup,
8 sponge, or similar product used by women with
9 respect to menstruation or other genital-tract
10 secretions.”.

11 (b) ARCHER MSAs.—Section 220(d)(2)(A) of such
12 Code is amended by striking the last sentence and insert-
13 ing the following: “For purposes of this subparagraph,
14 amounts paid for menstrual care products (as defined in
15 section 223(d)(2)(D)) shall be treated as paid for medical
16 care.”.

17 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
18 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
19 tion 106 of such Code is amended by striking subsection
20 (f) and inserting the following new subsection:

21 “(f) REIMBURSEMENTS FOR MENSTRUAL CARE
22 PRODUCTS.—For purposes of this section and section
23 105, expenses incurred for menstrual care products (as
24 defined in section 223(d)(2)(D)) shall be treated as in-
25 curred for medical care.”.

1 (d) EFFECTIVE DATES.—

2 (1) DISTRIBUTIONS FROM HEALTH SAVINGS AC-
3 COUNTS.—The amendments made by subsections (a)
4 and (b) shall apply to amounts paid after December
5 31, 2018.

6 (2) REIMBURSEMENTS.—The amendment made
7 by subsection (c) shall apply to expenses incurred
8 after December 31, 2018.

9 **SEC. 8. CERTAIN AMOUNTS PAID FOR PHYSICAL ACTIVITY,**
10 **FITNESS, AND EXERCISE TREATED AS**
11 **AMOUNTS PAID FOR MEDICAL CARE.**

12 (a) IN GENERAL.—Section 213(d)(1) of the Internal
13 Revenue Code of 1986 is amended by striking “or” at the
14 end of subparagraph (C), by striking the period at the end
15 of subparagraph (D) and inserting “, or”, and by adding
16 at the end the following new subparagraph:

17 “(E) for qualified sports and fitness ex-
18 penses.”.

19 (b) QUALIFIED SPORTS AND FITNESS EXPENSES.—
20 Section 213(d) of such Code is amended by adding at the
21 end the following paragraph:

22 “(12) QUALIFIED SPORTS AND FITNESS EX-
23 PENSES.—

1 “(A) IN GENERAL.—The term ‘qualified
2 sports and fitness expenses’ means amounts
3 paid for—

4 “(i) membership at a fitness facility,

5 “(ii) participation or instruction in a
6 program of qualified physical activity, or

7 “(iii) safety equipment for use in a
8 program (including a self-directed pro-
9 gram) of qualified physical activity.

10 “(B) LIMITATIONS.—

11 “(i) OVERALL DOLLAR LIMITATION.—

12 The aggregate amount treated as qualified
13 sports and fitness expenses with respect to
14 any taxpayer for any taxable year shall not
15 exceed \$500 (twice such amount in the
16 case of a joint return or a head of house-
17 hold (as defined in section 2(b))).

18 “(ii) DOLLAR LIMITATION ON SAFETY

19 EQUIPMENT.—The amount treated as
20 qualified sports and fitness expenses with
21 respect to any item of safety equipment de-
22 scribed in subparagraph (A)(iii) shall not
23 exceed \$250.

24 “(iii) EXCLUSION OF EXERCISE VID-

25 EOS, ETC.—Qualified sports and fitness ex-

penses shall not include videos, books, or similar materials.

“(C) QUALIFIED PHYSICAL ACTIVITY.—

For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘qualified physical activity’ means any physical exercise or physical activity.

“(ii) EXCLUSIONS.—The Secretary, after consultation with the Secretary of Health and Human Services, shall issue guidance to determine for purposes of this paragraph what does not constitute a qualified physical activity, including golf, hunting, sailing, horseback riding, and other similar activities.

“(D) FITNESS FACILITY DEFINED.—For purposes of subparagraph (A)(i), the term ‘fitness facility’ means a facility—

“(i) providing instruction in a program of qualified physical activity or facilities for qualified physical activity,

“(ii) which is not a private club owned and operated by its members,

1 “(iii) whose health or fitness facility is
2 not incidental to its overall function and
3 purpose, and

4 “(iv) which is fully compliant with ap-
5 plicable State and Federal anti-discrimina-
6 tion laws.

7 “(E) PROGRAMS WHICH INCLUDE COMPO-
8 NENTS OTHER QUALIFIED PHYSICAL ACTIV-
9 ITY.—Rules similar to the rules of paragraph
10 (6) shall apply in the case of any program or
11 facility that includes qualified physical activity
12 (or facilities therefore) and also other compo-
13 nents. For purposes of the preceding sentence,
14 travel and accommodations shall be treated as
15 an other component.

16 “(F) INFLATION ADJUSTMENT.—In the
17 case of any taxable year beginning in a calendar
18 year after 2019, the \$500 amount in subpara-
19 graph (B)(i) and the \$250 amount in subpara-
20 graph (B)(ii) shall each be increased by an
21 amount equal to—

22 “(i) such dollar amount, multiplied by

23 “(ii) the cost-of-living adjustment de-
24 termined under section 1(f)(3) for the cal-
25 endar year in which such taxable year be-

4 If any increase determined under the preceding
5 sentence is not a multiple of \$10, such increase
6 shall be rounded to the next lowest multiple of
7 \$10.”.

Passed the House of Representatives July 25, 2018.

Attest: KAREN L. HAAS,
Clerk.